



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

## **ORDER M-780**

**Appeal M\_9600081**

**Nipissing District Roman Catholic Separate School Board**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Nipissing District Roman Catholic Separate School Board (the Board) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of a letter written by a named individual (the author) in October, 1995, and submitted to the principal of the school attended by the requester's son. The letter describes an alleged incident which occurred between the requester's son and the son of the author. The requester also asked for any other information relating to the letter which the principal may have on file.

The Board denied the requester access to the letter in question on the basis of the following exemption:

- invasion of privacy - section 38(b)

The requester appealed the Board's decision. During the course of the appeal, the requester (now the appellant) advised the Appeals Officer that she is seeking access to the letter only. The record at issue is a two-page handwritten letter.

A Notice of Inquiry was provided to the appellant, the Board, the author, and three individuals whose interests may be affected by the disclosure of the record (the affected persons). The affected persons include a parent of the author's son, a grandparent of the author's son, and the parent of a boy who witnessed the alleged incident.

Representations were received from the appellant and one affected person. A supplementary Notice of Inquiry addressing section 54(c) of the Act (the exercise of rights by a person who has lawful custody of an individual who is less than sixteen years of age) was subsequently issued to the same parties. Representations on this issue were received from the Board and the appellant.

## **DISCUSSION:**

### **PRELIMINARY MATTER**

The request was made by the mother of the boy who is the subject of the letter. Section 54(c) of the Act provides that:

Any right or power conferred on an individual by this Act may be exercised,

if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

The appellant has provided written confirmation that she has lawful custody of her son, who is seven years of age. This fact has not been disputed by any other party to this appeal. In the circumstances of this case, I find that the mother was exercising the right to make a request on behalf of her son.

## **INVASION OF PRIVACY**

Section 2(1) of the Act defines personal information, in part, as “recorded information about an identifiable individual ...”. I have reviewed the record at issue and find that it contains primarily the personal information of the appellant’s son, the author and her son and one of the affected persons. Two of the affected persons are only referred to peripherally at the end of the letter as having received notice of the alleged incident. In my view, only their names and personal relationship to the individual(s) referred to in the letter qualify as their personal information.

The record also contains the names of a number of other individuals identified as a school principal, an education officer, a child care worker, a school board trustee, a school bus driver, a deputy police chief, and two police officers from two different forces. In my view, these individuals are included in the record in the context of their professional capacities and as such, their information cannot be considered “personal information”. This finding is consistent with many previous orders of the Commissioner’s Office (Orders 157, P-326 and P-328).

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access. Under section 38(b) of the Act, where a record contains the personal information of both the appellant (in this case, the appellant’s son) and other individuals and the Board determines that disclosure of the information would constitute an unjustified invasion of another individual’s personal privacy, the Board has the discretion to deny the requester access to that information.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the Board must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

As mentioned above, the Board is claiming that section 38(b) applies to exempt the record in its entirety. The Board has not, however, indicated which part or parts of section 14 it is relying on to provide guidance in determining whether disclosure of personal information would result in the unjustified invasion of personal privacy. In her representations, the appellant did not specifically address the application of sections 14 or 38 to the record, nor have any of the affected persons. Because the record contains personal information, I have undertaken to independently review the record to determine whether section 38(b) applies.

In my view, the information before me and the contents of the record itself raise the possible application of sections 14(2)(f), 14(2)(h) and 14(3)(b) of the Act. These sections read:

- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
  - (f) the personal information is highly sensitive;
  - (h) the personal information has been supplied by the individual to whom the information relates in confidence;
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
  - (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

In reviewing the record, I note that it describes an incident concerning two children which was witnessed by a third child. The personal information of the three children is so intertwined that it is not possible to separate the information as it relates to each child. In my view, considering the nature of the allegations against the appellant's son, the personal information at issue can be considered highly sensitive (14(2)(f)). This factor favours non-disclosure of the personal information.

With respect to section 14(2)(h), despite the fact that the letter has been marked "confidential", the appellant's representations and the record itself indicate that the information has been widely disseminated. In particular, the letter is addressed to a school principal, an education officer and a child care worker. Further, the letter indicates that the author discussed the alleged incident with a school trustee and Native Band member, two police officers from two separate forces, the Deputy Chief of the Native Band, a parent of the author's son, a grandparent of the author's son, and the parent of a boy who witnessed the alleged incident.

In her representations, the appellant states that the allegations were investigated by the Children's Aid Society and discussed with the school principal and Board administrators. According to the appellant, the author also brought this matter before the Band Council and the Band's Education Committee.

Under the circumstances, I do not accept that the author provided the information in confidence. Even if I were to accept that the information was originally intended to be confidential, I find that any expectation she might have that the information remain confidential is not reasonable. I find therefore, that section 14(2)(h) is not a relevant consideration in the circumstances of this appeal.

Although the record indicates that members of the police were notified of the alleged incident, there is no evidence before me that the information at issue was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, I find that section 14(3)(b) is not applicable in the circumstances of this case.

The preamble to section 14(2) indicates that, in deciding whether disclosure would be an unjustified invasion of personal privacy, "all the relevant circumstances" should be considered. In my view, the appellant has raised a set of circumstances which is not specifically listed in section 14(2), but which I believe is a relevant consideration in the context of this appeal.

As I indicated above, the appellant maintains that the record was provided to various persons and the allegations against her son were investigated or addressed by a number of formal bodies, including the Children's Aid Society. She submits that although others were provided with a copy of the letter, she has not received a copy and in fact, first learned of the allegations after being contacted by the school principal. The record currently forms part of her son's school record. The appellant submits that because of the sensitive and serious nature of the allegations contained in the record, the young age of her son and the actions that have been taken by authorities, she should have access to the record.

I have weighed the interests of the appellant in disclosure of the record against the factors favouring privacy protection. In the circumstances of this appeal, I find that the consideration favouring disclosure is more compelling, and I find that disclosure of the record would not be an unjustified invasion of personal privacy. Accordingly, I find that the record is not exempt under section 38(b) and should be disclosed to the appellant.

**ORDER:**

1. I order the Board to disclose the record in its entirety to the appellant by sending her a copy by **July 8, 1996** but not before **July 3, 1996**.
2. In order to verify compliance with the terms of this order, I reserve the right to require the Board to provide me with a copy of the record that is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ June 3, 1996